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TEMPLARS Transcripts: Tax Digest

Legislative Advancement

The Value Added Tax (Modification) Order 2024

On 2 October 2024, the Federal Government published the Value Added Tax (Modification) Order 2024 (the "**2024 Order**") in a bid to boost Nigeria's Oil and Gas Sector. The Order was issued by the Minister of Finance and Coordinating Minister of the Economy, Mr. Adebayo Olawale Edun, pursuant to Section 38 of the Value Added Tax Act.

The 2024 Order which commenced on 1 September 2024 introduces VAT exemptions on a range of key energy products and infrastructure with the objective of lowering the cost of living, bolstering energy security, and accelerating Nigeria's transition to cleaner energy sources.

Below are highlights of the provisions of the 2024 Order.

- **Expansion of Goods Exempt from VAT:** The 2024 Order extended the list of goods exempt from VAT under Part I of the First Schedule to the VAT Act to include:
  a. Equipment and infrastructure related to the expansion of Compressed Natural Gas (CNG) including conversion kits
  b. Equipment and infrastructure related to the expansion of Liquefied Petroleum Gas (LPG) equipment including conversion kits
  c. Domestic Liquefied Natural Gas (LNG) Processing Facilities and Equipment
  d. Electric Vehicles
  e. Parts, semi-knock-down units for the assembly of Electric Vehicles
  f. Biogas and biofuel equipment and accessories for clean cooking and transportation

  The Schedule to the 2024 Order provides a more detailed and comprehensive list and description of the items.

- **Expansion of Services Exempt from VAT:** The 2024 Order also extended the list of service exempt from VAT under Part II of the First Schedule to the VAT Act to include:
    a. Compressed Natural Gas (CNG) conversion and installation services
    b. Liquefied Petroleum Gas (LPG) conversion and installation services
    c. Manufacturing, assemblage and sale of electric vehicles

- **New definition of "Petroleum Products":** Prior to now, the VAT Modification Order 2021, defined Petroleum product to mean "aviation turbine kerosene, premium motor spirit, household kerosene and locally produced liquified petroleum gas and crude petroleum oils."

  The 2024 Order has now amended the definition of "*petroleum products" to give a broader definition encompassing "feed gas for all processed gas, aviation turbine kerosene, premium motor spirit, automotive gas oil, household kerosene, locally produced liquefied petroleum gas, compressed natural gas, imported liquefied petroleum gas, and crude petroleum oils."*

- **VAT Exemption of Automotive Gas Oil and Retrospective Application:** Automotive Gas Oil (AGO) was first exempted from VAT by the VAT Modification Order 2018. This exemption was maintained in the VAT Modification Order of 2020. However, when the VAT Modification Order 2021 was introduced, it amended the list of petroleum products previously exempt from VAT under the 2018 Order, by removing AGO from the list of petroleum products exempt from VAT. Thus, AGO was no longer exempt from VAT.

  However, the 2024 Order has now included AGO in the definition of petroleum products and re-listed AGO as a petroleum product exempt from VAT. The 2024 Order also provides that the exemption will be deemed to have commenced since 1 October 2023, providing a retrospective application of the exemption. This implies that every transaction involving supply of AGO concluded as of 1 October 2023 will be deemed exempt from VAT.

The Deduction of Tax at Source (Withholding) Regulation, 2024

On 2 October 2024, the Federal Government published a gazetted copy of the Deduction at Source (Withholding Tax) Regulation 2024 (the "**Gazetted Regulations**"). The Gazetted Regulations were issued by the Minister of Finance and Coordinating Minister of the Economy, Mr. Adebayo Olawale Edun pursuant to Section 81(9) of the Companies Income Tax Act (CITA), Section 56 of the Petroleum Profit Tax Act (PITA), and Section 73(6) of the Personal Income Tax Act (PITA).

The Gazetted Regulations was earlier released as a draft on 1 July 2024 (the "**Draft Regulations**") which we addressed in the July edition of our Tax Market Review. While the Gazetted Regulations retains most of the provisions contained in the Draft Regulations, some amendments have been introduced.

Below are highlights of the amendments introduced by the Regulations.

- **Commencement Date:** The commencement date under the Draft Regulations was 1st July 2024. However, the Regulations now provides 30th September 2024 as the new commencement date.

- **Removal of the One-off annual interest Penalty for Failure to Deduct WHT Before Payment:** The Draft Regulations provides that where a person required to deduct at source fails to do so and pays the portion of the required deduction to the recipient, *only an administrative penalty and a one-off annual interest on the amount not deducted shall be payable as penalty*. The gazetted copy of the Regulations has now deleted the "one-off annual interest on the amount not deducted" while maintaining administrative penalty as the only penalty for failure to deduct before payment.

- **Introduction of an Additional Transaction Exempt from Deduction at Source:** The Regulations introduced *telephone charges, internet data and airline tickets* as transactions exempted from WHT in addition to the list of exempted transactions contained in the Draft Regulation.

- **Revocation of existing WHT framework:** The Regulations revoked all existing regulations in respect of deductions at source or WHT but maintained the obligations performed under the revoked regulations.

- **Implementation Date:** The Regulations provides 1st January 2025 as the effective date for the implementation of the Regulations allowing the minimum of 90 days' notice required for tax changes in line with the 2017 National Tax Policy.

  The Regulation also gives the Federal Inland Revenue Service (FIRS) or State Internal Revenue Service (SIRS) power to issue guidelines for the implementation of the Regulations and to prescribe modalities permitting early application of the Regulations from 1 July 2024. The essence of this provision is to enable persons seeking to adopt the Regulations before the implementation date to do so since the Regulation is generally providing reliefs to businesses rather than imposing a burden. The implication of this is that two (2) possible dates- 1 July 2024 and 1 January 2025, may apply as the implementation date of the Regulations.

  Notwithstanding, in exercise of this powers the FIRS issued a public notice on 3 October 2024 stating that the Regulations will take effect on 1 January 2025 and that the WHT regime of 1997[1] continues to subsist until 31 December 2024.

  The SIRS have not issued any public notice, circular or guideline on the implementation of the Regulations as it concerns payment to SIRS. Pending any such guideline from the SIRS, the subsisting WHT Regulations of 1997[2] continues to subsist until 31 December 2024.

[1] Companies Income Tax (Rates, Etc, of Taxes Deducted at Source (Withholding Tax) Regulations 1997.
[2] Personal Income Tax (Rates, Etc, of Taxes Deducted at Source (Withholding Tax) Regulations 1997.

The Economic Stabilisation Bills

In the September edition of our Tax Market Review, we highlighted several reform proposals made by the Presidential Committee on Fiscal Policy and Tax Reforms (the **Committee**) to the Federal Government of Nigeria in relation to Nigeria's fiscal system. On 24 September 2024, Taiwo Oyedele, the chairman of the Committee announced on LinkedIn that the Federal Executive Council has approved the Economic Stabilisation Bills (**ESBs**), which incorporate some of the Committee's recommendations, as part of the Accelerated Stability and Advancement Plan (ASAP) of the government.

According to Mr. Oyedele, the ESBs aim to amend approximately fifteen (15) tax, fiscal, and establishment laws to promote economic stability and position the country for sustained, inclusive growth. The proposed amendments are intended to achieve the following key objectives:

a) Reduce inflation and ensure price stability
b) Complement monetary policy measures with appropriate fiscal interventions to strengthen the Naira and sustain exchange rates convergence
c) Promote fiscal discipline and consolidation
d) Enhance job creation and poverty alleviation
e) Export promotion and diversification

Below are some highlights of proposed amendments in the ESBs -

- **Income Tax Amendments**: Amendments to the income tax laws to facilitate employment opportunities for Nigerians in Nigeria within the global value chain, including the digital economy.

- **Zero-Rated VAT and Export Incentives:** A zero VAT rating on food, healthcare and education and enhanced incentive regime to boost exports of goods, services, and intellectual property.

- **Gas Sector Investments:** Amendments to encourage investment in the gas sector and simplify local content requirements to ensure competitiveness.

- **Foreign Exchange Reforms:** Reform of the foreign exchange regime to expand the regulatory powers of the Central Bank of Nigeria (CBN), unlock more forex liquidity, strengthen the Naira, and promote exchange rate convergence.

- **Tax Relief for Private Sector Employers:** Private sector employers will receive tax relief for providing wage awards and transport subsidies to their employees.

- **Tax Relief for Employment Generation:** Companies that generate incremental employment and retain workers for at least three years will be granted tax relief.

- **Fiscal Discipline and Revenue Remittances:** Measures to enhance fiscal discipline and improve the remittance of revenues from government agencies and corporations to the Consolidated Revenue Fund of the federal government.

- **Tax Suspension for Small Businesses and Vulnerable Groups:** Collaboration with states to suspend certain taxes on small businesses and vulnerable groups, such as road haulage levies and transportation charges, as well as various business premises, trade, and market taxes.

- **Tax Identification Consolidation and Collaboration (TICC):** Introduction of the TICC initiative to expand the tax base, widen the tax net, and ensure a level playing field for businesses.

- **Additional Funding for the Students Loan Scheme:** Provision of increased funding to support the Students Loan Scheme.

The Bills are to be transmitted to the National Assembly for passage into law.

Policy and Tax Administration

Federal Government proposes allocating 30% of TETFUND for Student Loan

The Federal Government has proposed amendments to the Tertiary Education Trust Fund (TETFUND) Act, recommending that 30% of its allocations from the Federation Account be redirected to fund the Nigerian Education Loan Fund (NELFUND) established under the Students Loans (Access to Higher Education) Act.

This proposed amendment is aimed at promoting funding for higher education to be accessed by Nigerian students and was confirmed by Bayo Onanuga, Special Adviser to the President on Information and Strategy, during a State House briefing on 26 September 2024.

Mr. Onanuga noted that the NELFUND will be financed through this amendment to ensure a sustainable source of financial support for students, thereby addressing prior concerns regarding the government's strategy for maintaining the loan initiative.

FIRS Partners with Abuja Chamber of Commerce to Boost Tax Compliance

In a bid to strengthen its commitment to enhancing tax compliance among Nigerian businesses, the Federal Inland Revenue Service (FIRS) has entered a strategic partnership with the Abuja Chamber of Commerce and Industry (ACCI).

This collaboration was announced by the FIRS Chairman, Zacch Adedeji, who was represented by the Director of Taxpayers Services, Dr. Lovette Ononuga during the opening ceremony of the 19th Abuja International Trade Fair held on 23rd September 2024.

According to her, the partnership is pivotal to advancing tax advocacy and fostering voluntary compliance by raising awareness of the benefit of tax compliance for economic development. She emphasized that through the collaboration, both organizations will cultivate a culture of compliance, thereby strengthening the tax system and contributing to the stability and predictability of Nigeria's business environment.

Federal Government to Stimulate Economic Growth with Single-Digit Interest Rates and Tax Incentives

On 19 September 2024, the Honourable Minister of Finance and Coordinating Minister of the Economy, Wale Edun, announced that the Federal Government of Nigeria has unveiled key initiatives aimed at driving economic growth in the Country. These initiatives include reductions in corporate taxes, introduction of single-digit interest rates, and funding for local manufacturing. This announcement was made at the Access Bank's 2024 'Corporate Customer Forum held in Lagos.

Speaking on the single-digit interest rate, Mr Edun emphasized that the Federal Government is committed to creating an enabling environment for the private sector, through the provision of long-term, low-interest mortgages with repayment periods of up to 25 years.

On funding for manufacturers, he explained that Consumer Credit Scheme[3], approved by the President in April 2024, will facilitate the purchase of durable goods, thereby stimulating the manufacturing sector. As regards the reduction of corporate tax, he highlighted that the Federal Government is aimed at enabling businesses retain more capital for reinvestment and expansion.

According to him, the government intends to shift tax burden to high-end consumption, by increasing taxes on luxury goods while exempting essential items like food and pharmaceuticals from VAT. This is expected to drive local production, create jobs, and stimulate demand across key sectors such as agriculture, health, power, and oil and gas.

[3] The Consumer Credit Scheme (CSS) is a programme designed to offer credit facilities to working citizens of Nigeria. President Bola Tinubu approved the launch of its first phase in April 2024 in respect of which the Nigerian Consumer Credit Corporation (CREDICORP) launched a portal for Nigerians to express interest in receiving consumer credit.